

Effective 3/29/2014

Superseded 3/28/2016

63G-6a-802 Award of contract without competition -- Notice -- Extension of contract without engaging in standard procurement process.

- (1) As used in this section:
- (a) "Transitional costs" mean the costs of changing from an existing provider of, or type of, a procurement item to another provider of, or type of, procurement item.
 - (b) "Transitional costs" include:
 - (i) training costs;
 - (ii) conversion costs;
 - (iii) compatibility costs;
 - (iv) system downtime;
 - (v) disruption of service;
 - (vi) staff time necessary to put the transition into effect;
 - (vii) installation costs; and
 - (viii) ancillary software, hardware, equipment, or construction costs.
 - (c) "Transitional costs" do not include:
 - (i) the costs of preparing for or engaging in a procurement process; or
 - (ii) contract negotiation or contract drafting costs.
 - (d) "Trial use contract" means a contract between a procurement unit and a vendor for a procurement item that the procurement unit acquires for trial use or testing to determine whether the procurement item will benefit the procurement unit.
- (2) The division or a procurement unit with independent procurement authority may award a contract for a procurement item without competition if the procurement officer, the head of the procurement unit, or a designee of either who is senior to the procurement officer or the head of the procurement unit, determines in writing that:
- (a) there is only one source for the procurement item;
 - (b) the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item; or
 - (c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.
- (3) Circumstances under which there is only one source for a procurement item may include:
- (a) where the most important consideration in obtaining a procurement item is the compatibility of equipment, technology, software, accessories, replacement parts, or service;
 - (b) where transitional costs are unreasonable or cost prohibitive; or
 - (c) procurement of public utility services.
- (4)
- (a) Subject to Subsection (4)(b), the applicable rulemaking authority shall make rules regarding the publication of notice for a sole source procurement that, at a minimum, require publication of notice of a sole source procurement, in accordance with Section 63G-6a-406, if the cost of the procurement exceeds \$50,000.
 - (b) Publication of notice under Section 63G-6a-406 is not required for:
 - (i) the procurement of public utility services pursuant to a sole source contract; or
 - (ii) other sole source procurements provided by rule.
- (5) The division or a procurement unit with independent procurement authority who awards a sole source contract on behalf of another procurement unit shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best interest of the procurement unit.

- (6)
- (a) The period of trial use or testing of a procurement item under a trial use contract may not exceed 18 months, unless the procurement officer provides a written exception documenting the reason for a longer period.
 - (b) A trial use contract shall:
 - (i) state that the purpose of the contract is strictly for the purpose of the trial use or testing of a procurement item;
 - (ii) state that the contract terminates upon completion of the trial use or testing period;
 - (iii) state that, after the trial use or testing period, the procurement unit is not obligated to purchase or enter into a contract for the procurement item, regardless of the trial use or testing result;
 - (iv) state that any purchase of the procurement item beyond the terms of the trial use contract will be made in accordance with this chapter; and
 - (v) include, as applicable:
 - (A) test schedules;
 - (B) deadlines and a termination date;
 - (C) measures that will be used to evaluate the performance of the procurement item;
 - (D) any fees and associated expenses or an explanation of the circumstances warranting a waiver of those fees and expenses;
 - (E) the obligations of the procurement unit and vendor;
 - (F) provisions regarding the ownership of the procurement item during and after the trial use or testing period;
 - (G) an explanation of the grounds upon which the contract may be terminated;
 - (H) a limitation of liability;
 - (I) a consequential damage waiver provision;
 - (J) a statement regarding the confidentiality or nondisclosure of information;
 - (K) a provision relating to any required bond or security deposit; and
 - (L) other requirements unique to the procurement item for trial use or testing.
 - (c) Publication of notice under Section 63G-6a-406 is not required for a procurement pursuant to a trial use contract.
- (7) The division or a procurement unit with independent procurement authority may extend a contract for a reasonable period of time without engaging in a standard procurement process, if:
- (a) the award of a new contract for the procurement item is delayed due to a protest or appeal;
 - (b) the standard procurement process is delayed due to unintentional error;
 - (c) changes in industry standards require significant changes to specifications for the procurement item;
 - (d) the extension is necessary to prevent the loss of federal funds;
 - (e) the extension is necessary to address a circumstance where the appropriation of state or federal funds has been delayed;
 - (f) the extension covers the period of time during which contract negotiations with a new provider are being conducted; or
 - (g) the extension is necessary to avoid a lapse in critical governmental services that may negatively impact public health, safety, or welfare.